

## REMARKS

In the Office Action, Claims 25-27, 30-36, 38, 45-47, 49 and 50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Goebel in view of Malhotra or Ito and optionally the admitted prior art (specification, page 4, lines 21-25. Claims 28, 29, 43 and 44 were rejected under 35 U.S.C. §103(a) as being unpatentable over Goebel Malholtra or Ito further in view of Jannusch and optionally over the admitted state of the art. Claims 39-42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Goebel, Malholtra, Ito and the admitted prior art further in view of Kelly.

Reconsideration is requested.

Claims 25 and 47 have been amended to include a step where the microvoided patch label is placed in a magazine or gripper and fed from said magazine or gripper to a point where a water based adhesive is applied to form the fastenable label. Support for the amendment to step (c) is found in the specification at page 7, lines 21-35 where it is disclosed that the feeding of the labels from the magazine or gripper and the transfer of water or a water based adhesive from the applicator, pad or pallet to the polymeric label substrate is described.

Claim 50 has been amended to positively recite that a water based adhesive is applied to a microvoided polymeric film to form a fastenable microvoided polymeric film which is cut into patch labels. Support for this is found in original claim 1 and in Examples 2 and where it was disclosed that a microvoided film was coated, with a water based adhesive and cut into individual patch labels using a water based adhesive. The labels are fed from a magazine or gripper as described in the specification at page 5, line 32 to page 6, line 5 and wet

with water or a water based adhesive as described in the Examples.

Amended claims 25, 47 and 50, and the claims that depend on these claims, define unobvious subject matter and are patentable over the combination of Goebel, Malholtra and Ito.

Goebel has been applied as disclosing labels for gluing on articles which may be made of paper or plastics films. The labels are provided with a hydrophilic carboxy group containing polymer. Example 3 of Goebel describes a plastic foil (film) of PVC as a label substrate and mentions at col.1, line 62 that aqueous adhesive may be used. There are eight examples in Goebel and all examples except Example 3 are only concerned with papers labels. No test data was provided by Goebel to demonstrate if or how his PVC foil could be used to label a container. In addition Goebel did not mention of the use of a stack and feed or gripper type of label application device.

The Examiner has acknowledged that the plastic foil (film) of Example 3 of Goebel is not microvoided as required by the claims that are before the Examiner in the present application but has applied Malholtra as disclosing a microvoided polymeric label stock. However Malholtra does not disclose the use of water or a water based adhesive, as required by the claims before the Examiner which also require that the microvoided polymeric patch label that will readily feed from a label magazine or gripper, will allow a water based adhesive to migrate into said microvoided polymeric label.

The Examiner has argued that the claims merely require that the microvoided polymer label be capable of allowing a water based adhesive to migrate into the microvoided polymer. This argument does not apply to amended claims 25, 47 or 50 which are method claims where water or a water based adhesive is applied to the polymeric label to form a fastenable patch label. The step of applying water or a water

based adhesive on microvoided polymeric patch label results in the migration of water into the microvoided material because of the physical structure of the microvoided polymeric patch label which is porous and thus water will flow into this material. This concept is not disclosed by Goebel who only mentions a plastic foil (film) which is not porous. In Malholtra, no water based material is used as an adhesive.

Example 3 of Goebel has been repeated and the results are presented in a Declaration of Leslie Fernandez that is of record in U.S. 6,663,746 and a copy has been filed in the present application. That Declaration provides data that shows that label of Example 3 will not dry and the treated surface remains sticky like cellophane tape so that those individual labels will stick to one another and cannot be used in a labeling machine where they are stacked one upon another. The amendatory language of claims 25, 47 and 50 points out that the claimed process uses a patch label that will readily feed from a label magazine or gripper. In addition claims 25, 47 and 50 recites the direct application of an adhesive to the polymer label.

The density of the PVC film is not set forth in Goebel and nothing in Goebel suggests the use of a microvoided patch label that will allow a water based adhesive to migrate into the microvoided polymeric label.

The Malholtra patent mentions a filled polypropylene with microvoids that is used to make printable pressure laminated labels that are applied with a pressure sensitive adhesive. At col. 5, lines 44-60, it is clear that pressure sensitive adhesives are required by the Malholtra patent. The pressure sensitive *polypropylene* label of Malholtra does not suggest any modification of the hydrophilic coated *PVC* label of Goebel. Malholtra uses a pressure sensitive adhesive while Goebel suggests a water based adhesive. Goebel would not use the microvoided label of Malholtra for a non-pressure sensitive label application and thus there is no suggestion in

Goebel to modify his process to include a microvoided polymer. It should be kept in mind that Goebel, the primary reference, is dated in 1965 while Malholtra is dated in 1999. It is also noteworthy that in combining Goebel with Malholtra, the recitation in claims 25, 47 and 50 of the present application as well as the claims dependent on these claims, that the patch label will readily feed from a label machine or gripper, must be ignored, because labels with a pressure sensitive labels cannot be applied from a magazine of a stack and feed labeler or gripper as they would stick to one another. It is not proper to ignore the plain teachings of the prior art when making a determination of obviousness.

The Examiner has argued that the claims are not commensurate with the "argument that the label including the adhesive or hydrophilic layer thereon must readily feed from a label or magazine gripper as the claims do not require such". Claims 25 and 47 have been amended so that part (c) recites "fastening said fastenable polymeric label to a glass, plastic or metal container or surface after feeding said fastenable polymeric label from a label magazine or gripper". The language of the amended claims explicitly points out that the coated polymeric label are placed in and/or are fed from a magazine or gripper.

The Ito patent only discloses a voided material that can be used for labeling and there is no reason to combine this patent with Goebel because if the voided film is used in place of the film and paper of Goebel the labels would not require the treatment taught by that patent. There is no mention in Ito of what type of adhesive could or should be used if the product is used to make labels.

None of the cited references address the problem solved by the present invention which is the labeling of plastic, glass or metal containers with a microvoided polymer using a water based adhesive. There was no suggestion in Ito that the voided property could be utilized to manage the water in a water based adhesive when the microvoided film was used a

labeling material.

The admitted prior art at page 4, lines 21-25 of the specification was concerned with hot melt technology as noted at page 4, line 12. The fact that hot melt adhesives have been used as label adhesives for polymeric labels provides no teaching or suggestion as to how to use a water based adhesive to fasten a polymeric label to a glass, plastic or metal container. The present specification at page 5, lines 6-35 explains why a water based adhesive does not work with a polymer label where the water based adhesive is applied to a ordinary polymer film: there is no place for the water to go and the label "swims" off the container.

Goebel, Maholtra and Ito as well as the admitted state of the art have been distinguished from the claimed invention above. Claims 28, 29, 43 and 44 point out that a cross-linking catalyst is used which is not used by the primary references. The Jannusch patent, at col. 8, line 38, mentioned polystyrene as the only example of a plastic. No mention was made of the use of polypropylene of claim 47.

Jannusch does not mention the use of any foamed plastic substrate as a label and makes no reference to the use of a heat shrinking technique in connection with the use of the Jannusch water based adhesive. Jannusch does not mention any type of a microvoided or foam label. Moreover, Jannusch is silent as to the use of any label substrate which allows water to migrate into the label.

The Jannusch patent is limited to a labeling system which must use a caustic sensitive labeling adhesive that contains an active metal such as aluminum. The metal component is added to make the adhesive debonding in the presence of a strong base. The labels that are disclosed in Example XIII, are paper and the only containers that are actually labeled are glass containers. There is no disclosure in Jannusch of any polymeric label having a density of less than 0.9.

Jannusch is defective as a reference because it lacks a teaching of anything that would suggest or make obvious the

combination of the teachings of that reference with Goebel. The deficiency in the Jannusch patent is that patent is only concerned with the use of an adhesive which contains an active metal that functions to make the adhesive debonding in the presence of a strong base. The labels that are disclosed in Jannusch, in Example XIII, are paper and the plastic labels that are mentioned are not disclosed as having being microvoided.

Goebel, Ito and the state of the art have been distinguished from the claimed invention above.

The Kelly patent only discloses of the use of slip aids in combination with labels that are not made of low density polymers. Nothing in Kelly teaches how to apply a microvoided polymer label to a container. For these reasons, it is requested that this ground of rejection be withdrawn.

The Examiner has criticized the prior filed Declaration of Leslie Fernandez in that it tested dried PVC films stacked and the claims do not require that the microvoided patch label that will feed from a label magazine or a gripper have a hydrophilic coating and that the applicants have not shown that a microvoided label with a hydrophilic coating thereon will readily feed from a label magazine or gripper. The prior filed Declaration did show that when the teachings of Goebel were followed with the exception that a 40micron sheet was used instead of a "50 micron sheet" and that a coating weight of 8 g./sq. meter was used instead of "6.7-9.7 g/sq. meter", and a heat gun was used for curing vs. "a drying chamber", as noted by the Examiner. It should be noted that Example 3 of Goebel states that it was dried in a "drying channel" while Example 1 recites drying in a "hanging room" and Example 2 recites drying in a "drying chamber" without any mention of the temperature. However, the noted differences have nothing to do with the fact that the Goebel product when stacked, each sheet adhered to the other because the applied adhesive remained tacky. As noted above, claims 27, 47 and 50 have been revised so they point out that they point out that

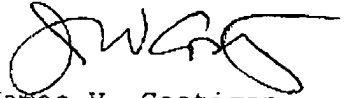
the microvoided coated are fed from a magazine or gripper.

Attached hereto is a further Declaration from Leslie Fernandez that reports that labels according to the invention which have a dried adhesive coating will feed from a magazine or gripper of a labeling machine. It is not seen that it is necessary to demonstrate that a label with a pressure sensitive adhesive or a sticky label will not feed from a magazine of a labeling machine because it is within the skill of the art to make this conclusion based on the established physical properties of the materials without jamming the magazine of a labeling machine in an actual test.

It is requested that the Examiner reconsider the prior Declaration of Leslie Fernandez as well as the newly presented Declaration in view of the amendments to the claims that have been discussed above and withdraw the rejections of record.

An early and favorable action is earnestly solicited.

Respectfully submitted,



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